

MANU/BH/0107/1934

Equivalent Citation: AIR1934Pat571, 152Ind. Cas.244

IN THE HIGH COURT OF PATNA

Decided On: 16.08.1934

Appellants:**Thakan Chaudhuri**
Vs.
Respondent:**Lachmi Narain**

Hon'ble Judges/Coram:

James, Varma and Mohamad Noor, JJ.

JUDGMENT

James, J.

1. The respondent instituted a suit on a mortgage bond claiming interest up to the date of suit valuing the suit at the amount, principal and interest, calculated as due at the date of institution, and paying court-fee on this amount. The suit was decreed for this amount with further interest which accrued pendente lite. The decretal amount was in due course realized from the judgment-debtors in execution proceedings, after which the execution case was struck off with a note of full satisfaction. When the decree-holder desired to withdraw the amount which had been realized, he was required by the Subordinate Judge to pay an additional sum of Rs. 210, as court-fee on the amount of interest which had accrued from the date of suit to the date of the decree. The decree-holder paid the court-fee, and then instituted further execution proceedings against the judgment-debtors to recover from them these additional costs incurred in the suit. The judgment-debtors protested.

2. The Subordinate Judge before whom the objection came was of opinion that the order calling upon the decree-holder to pay additional court-fee was bad in law; but as an order had been made by his predecessor by which the decree-holder was entitled to realize the value of this court-fee from the judgment-debtors, he considered that the execution must proceed, and the order must be enforced. The judgment-debtors appealed to this Court. The appeal came before a Division Bench, but as there was some conflict of decisions in this Court on the question which had to be determined, the appeal has been referred to a larger Bench,

3. It appears that in Muzaffarpur there is a standing order of the District Judge that additional court-fee must be exacted for interest accruing pendente lite decreed in mortgage suits before execution is taken out or before the decree-holder is permitted to withdraw the amount realized in execution. This procedure is apparently based on the decision in *Jamuna Rai v. Ramtahal Raut* 1922 Pat 387, wherein the late Sir Jwala Prasad remarked that a plaintiff decree-holder seeking to enforce a decree directing payment of future interest is bound to pay the court-fee upon the interest claimed by him in execution for which no court-fee was paid in the suit, Sir Jwala Prasad remarked:

There can hardly be any doubt that a mortgagee seeking to enforce the mortgage and praying to recover the amount due thereunder has to pay court-fee not only upon the sum decreed but also upon the interest that

becomes due to him subsequent to the decree and which he claims in the execution.

This was the ground upon which the decision was based, though the Judges in that case were dealing with the question of the court-fee payable on a memorandum of appeal. As authority for this proposition Sir Jwala Prasad relied upon the decision in *Percival v. Collector of Chittagong* (1903) 30 Cal 516.

4. That was an appeal in a land acquisition case, wherein the appellant is required to state definitely the amount which he claims in excess of the award and to pay court-fees on that amount. In that case the Judges found themselves unable to award to the appellant an amount in excess of that claimed by him in his memorandum of appeal though they remarked that it might have been open to him at an earlier stage to amend his memorandum of appeal and to pay court-fee on the higher amount claimed. But appeals under the Land Acquisition Act, are governed by the provisions of that Act and it does not appear to us that the special provisions of that Act should be extended by analogy to vary the precise provisions of the Court-fees Act, a fiscal enactment which must be strictly construed.

5. The question which is now before the Court of whether the holder of a mortgage decree who had paid Court-fee on the amount due at the date of the institution of the suit could execute a decree for a higher amount on account of interest pendente lite without being liable to pay additional court-fee calculated on the higher sum came before a Division Bench (Coutts and Ross, JJ.), in January 1922, in the case of *Ram Bhujawan Prasad v. Natho Ram* 1922 Pat 59. The Bench held that no additional court-fee was leviable.

On 30th October 1922 Sir Jwala Prasad as Taxing Judge reasserted the view which he had expressed in *Jamuna Rai v. Ramtahal Raut* 1922 Pat 387, that a successful plaintiff should not be allowed to execute his decree unless he paid additional court-fee on the interest which had accrued pendente lite: *Kali Prasad Singh v. Mathura Prasad Singh* 1923 Pat 28. On 26th July 1926, in *Debi Lal v. Gosain Koleshar* 1928 Pat 58, the view that additional court-fee was payable on interest pendente lite was not accepted by Ross and Kulwant Sahay, JJ.

6. In that case the plaintiff had appealed to the High Court where he obtained a decree for a larger sum than that on which court-fee had been paid at the time of presentation of the plaint. The Stamp Reporter recommended that the court-fee on the excess should be realized from the successful appellant but the Judges remarked that they found no provision in the Court-fees Act, under which the appellant could be called upon to pay additional court-fee in the circumstances. The next case to which our attention is drawn is *Sadhu Saran v. Brahamdeo Lall* 1927 Pat 230.

7. The Stamp Reporter had reported that the memorandum of appeal of the plaintiff mortgagee in the Court of the District Judge had been insufficiently stamped, and that additional court-fee was due on account of the accrual of interest upon the principal amount since the filing of the plaint. The late Sir B.K. Mullick observed in that case:

We cannot find any provision of law authorizing the assessment of additional court-fee by reason of the accrual of Interest pendente lite. Here the appeal was by the plaintiff and the subject matter in dispute was the amount claimed in the plaint and no question arose under Section 11, Court-fees Act.

8. A month later in First Appeal No. 28 of 1924, the Taxing Officer in drawing the

attention of another Division Bench to a report of the Stamp Reporter also drew their attention to this recent decision of Mullick and Kulwant Sahay, JJ. The amount claimed as due at the date of the suit had been rupees 33,659, but interest pendente lite brought the amount of the decree to Rs. 42,196. The defendant appealed, properly valuing his appeal at the whole amount decreed, but the Stamp Reporter remarked that the plaintiff-respondents were liable under Section 12, Court-fees Act, to pay an additional court-fee of Rs. 100 on their plaint. The learned Judges remarked;

No question of additional court-fee arises in this case. The decision of Mullick and Kulwant Sahay, JJ., is directly in point with which we entirely agree ... (7).

The standing order of the District Judge of Muzaffarpur; appears to have been issued in accordance with the practice followed in the High Court for a few years up to the end of 1926; but the rule laid down in Jamuna Rai v. Ramtahal Raut 1922 Pat 387, has long ceased to be followed in the High Court and we consider that the decisions of the Division Benches in the cases of 1926 must be accepted. The Subordinate Judge of Muzaffarpur, erred in requiring the decree holders to pay additional court-fee, and this amount cannot properly be regarded as costs in the case to be recovered from the judgment-debtors.

9. I would therefore allow this appeal with costs and set aside the order by which the Subordinate Judge directed that execution for the sum of Rs. 210 should proceed.

Mohamad Noor, J.

I entirely agree. In my opinion: Jamuna Rai v. Ramtahal Raut 1922 Pat 387, was not correctly decided. There is no provision in the Court-fees Act under which a plaintiff can be called upon to pay court-fee on the amount of interest which accrues after the institution of the suit.

Varma, J.

10. I agree.

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